IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7812 OF 2004

N.A.Makkeri and others Petitioners

versus

The State of Maharashtra & ors. Respondents

shri P.K.Dhakephalkar, Sr.Counsel with Shri J.G.Reddy for petitioners.

Shri A.H.Palekar, AGP for respondents 1 to 3.

Shri Ashish S. Ved for respondent no.6.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. By this petition under Articles 226 and 227 of the Constitution of India the petitioners who are members of Suraj Co-operative Housing Society Limited, are challenging an order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai Division in Revision Application No.435 of 2004.

2. The only submission of Shri Dhakephalkar - learned Senior Counsel appearing for the

petitioners is that the Divisional Joint Registrar had no jurisdiction to pass an order in exercise of his revisional jurisdiction thereby nullifying the effect of earlier orders including that of the Co-operative Court and taking away the right of the petitioners to manage the co-operative housing society in question.

3. He refers to all factual details and submits that the petitioners have been elected to the Managing Committee pursuant to a valid election held as early as on 1st February 2004. These elections were the subject matter of challenge, at the instance of the rival group, in the proceedings before the Co-operative Court. Disputes were dismissed. Once the dispute was dismissed, a direction was issued, and in his submission rightly, by the Deputy Registrar, Co-operative Societies on 5th March 2004 to hand over the charge and affairs of the Managing Committee which comprises of the petitioners herein. A revision application to challenge that direction was dismissed by Divisional Joint Registrar on 23rd March 2004.

4. Thereupon, consequential directions were issued once again by the Deputy Registrar on 10th

August 2004 and 23rd August 2004 so that the charge is physically handed over.

5. All such directions were subject matter of the challenge under the impugned revision application. The Divisional Joint Registrar by order dated 2nd September 2004 has re-opened the entire issue and virtually gave effect to a purported re-poll held in the society by the rival faction. The Divisional Joint Registrar was of the view that the re-poll was held in a General Body Meeting and therefore, all earlier elections stood nullified.

6. After having perused these orders with the assistance of Shri Dhakephalkar, it appears that this petition has been filed in the year 2004. An ad-interim order is passed directing the parties to maintain status-quo. In my view, that would not serve any purpose because the impugned order not having been set aside, the parties successful at the re-poll would naturally claim a right to manage the affairs. Whereas, the writ petition being pending, an order of status-quo being passed, the petitioners would assert their right in the affairs of the society. Such a statement can only be resolved by holding fresh

elections. Shri Dhakephalkar, after taking instructions, does not oppose such a course of action.

7. Accordingly, this petition is disposed of by directing the Deputy Registrar, Co-operative Societies, 'K' Ward to firstly prepare a valid list of voters and thereafter to summon a general body meeting wherein the only agenda would be to elect a new Managing Committee. Prior to the meeting being summoned, naturally, the Deputy Registrar would prepare a schedule for the said elections enlisting therein various stages. The entire exercise shall be completed by him within a period of 12 weeks from today. Petition is disposed of. Needless to state that the Deputy Registrar shall proceed to hold the elections by ignoring the order dated 2nd September 2004 passed by the Divisional Joint Registrar. It would not prevent him from complying with these directions. Petition disposed of.

(S.C.DHARMADHIKARI, J.)